THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26026 of 2003

23.8.2005

Between:

M/s.Ambica Plastic Industries, Devi Nagar,

Near Kavadiguda, Secunderabad.

… Petitioner

AND

1. Central Power Distribution Company of Andhra Pradesh Ltd.,

represented by its Managing Director, Vidyut Soudha, Hyderabad

and two others.

… Respondents

ORDER:

The petitioner is availing power supply from the respondents under category III. The second respondent inspected the petitioner's premises and found that he was allegedly resorting to pilferage of energy. Accordingly, the second respondent estimated the value of pilferage at Rs.5,16,724/-, disconnected the power supply and called upon the petitioner by impugned notice dated 05.12.2003 to pay half of the assessed amount for the purpose of getting service connection.

After coming into force of Electricity Act, 2003 (the Act, for brevity) if a consumer is found to be indulging in unauthorized use of electricity, the assessing officer has to professionally assess the electricity charges payable by such person and issue notice under subsection (2) of Section 126 of the Act. After the objections filed by the consumer, it shall then be open to the assessing officer to pass appropriate orders. Before doing so, there is no power vested in the assessing officer to disconnect power supply. This position was explained by a Division Bench of this Court in **M/s.Mallikarjuna Polishing Industries v. Chief Managing Director, A.P.Transco** wherein it was laid down as under:

> Obviously, the provisional notice was issued under the terms and conditions issued under the Electricity (Supply) Act, 1948, which stood repealed by the Electricity Act, 2003, which came into force with effect from 10.6.2003. Chapter XII of the new Act deals with the investigation and enforcement. Section 126 provides for the process for making assessment, provisional and final, if on an inspection the equipments, gadgets, machines, devices are found to be tampered with or there is unauthorized use of electricity. There is no such power, while issuing provisional assessment, to

forthwith stop or disconnect electricity supply. Provisional assessment is in the nature of a show cause notice against which the consumer is entitled to have an opportunity of hearing before passing final order of assessment by the concerned authority. As such the notice dated 07.1.2004 will be deemed to have been issued only under Section 126 of the Electricity Act under which there is no authority or power to respondents to discontinue or disconnect the electricity supply or call upon the appellants to pay even part of the provisional assessment amount till final assessment is made.

It is brought to the notice of this Court that the petitioner herein has deposited an amount of Rs.1,00,000/- pursuant to the interim directions of this Court. It is needless to mention that such amount shall be adjusted against the amount finally assessed by the concerned authority.

The writ petition is, accordingly, disposed of. There shall be no order as to costs.

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(**V.V.S. RAO,J**)

August 23, 2005

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